

A G R E E M E N T

THIS AGREEMENT, made this _____ day of _____, 2006, by and between the State of Hawaii, by its Director of Transportation, hereinafter called the "State," and the Name of Recipient Organization, a private non-profit organization, whose business is Address of Recipient Organization, who is a Subrecipient as defined in 49 U.S.C. §5310, hereinafter called the "Subrecipient";

W I T N E S S E T H T H A T:

WHEREAS, 49 United States Code Section 5310 provides for Section 16(b)(2) of the Urban Mass Transportation Act of 1964, as amended, provides for capital grants to private non-profit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and disabled persons for whom mass transportation services are unavailable, insufficient, or inappropriate; and

WHEREAS, the Governor of the State of Hawaii, in accordance with a request by the United States Department of Transportation, Federal Transit Administration, hereinafter referred to as "FTA", has designated the State Department of Transportation to evaluate and select projects proposed by private non-profit organizations and qualified government

entities, and to administer and manage the Section 5310 grant;

WHEREAS, the State and the Subrecipient desire to secure and utilize grant funds for the transportation needs of the elderly and/or disabled citizens of the State of Hawaii;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the State and the Subrecipient agree as follows:

Section 1. Purpose of Agreement. The purpose of this Agreement is to provide for the undertaking of transportation services to the elderly and/or disabled with FTA funded equipment, hereinafter referred to as the "Project," by the Subrecipient and to state the terms, conditions and mutual understandings of the parties as to the manner in which the Project will be undertaken and completed.

Section 2. Scope of Project. The Subrecipient shall undertake and use the Project as described in its Application (Exhibit A), filed with and approved by the State and FTA, in accordance with the terms and conditions of this Agreement, FTA Master Agreement (Exhibit B), and FTA State Management Plan for FTA Assistance Programs, and applicable Federal, State and local requirements.

Section 3. Period of Performance. The Subrecipient shall undertake and use the Project until receiving approved disposition notice from the State.

Section 4. Cost of Project. The cost of the Project shall be in the amount indicated in the Project Contract, filed with and approved by the State and FTA, and shall be borne in the manner described therein. The Subrecipient agrees that it will provide the local share for this project in cash from sources other than Federal funds or from Federal sources only when appropriate Federal legislation specifically authorizes its use as local share. The Subrecipient shall initiate and prosecute to completion all actions necessary to enable the Subrecipient to provide its share of the Project costs at or prior to the time that such funds are needed to meet the Project cost. The Subrecipient further agrees that no reduction of the amount so provided by the Subrecipient will be made unless there is at the same time a refund to the State of a proportional amount of the FTA grant funds.

Section 5. Project Responsibility. The Subrecipient shall ensure that the Project financed by funds through this Agreement are undertaken, completed and operated in accordance to the Agreement.

Section 6. Title to Project. Title to the Project shall be in the name of the Subrecipient.

Section 7. Use of Project. The Subrecipient agrees that the Project shall be used for the provision of transportation service to elderly and/or disabled persons in the manner described in the Application. If, at any time, the Project is not used or is withdrawn from transportation service as described in the approved Application, the Subrecipient shall immediately notify the State, and with notice from the State the Subrecipient shall reimburse the State FTA's proportionate share, in accordance with FTA requirements.

The Subrecipient shall provide, in amount and form satisfactory to the State, such insurance or self-insurance as will be adequate to protect the Project throughout the period of use under this Agreement.

The Subrecipient shall maintain the Project at a high level of operational soundness, safety and cleanliness. The State and FTA shall have the right to conduct Subrecipient inspections and reviews for the purpose of confirming proper operation and maintenance pursuant of Section 5310 requirements and this Agreement.

The Subrecipient shall keep satisfactory records with regard to the use of the Project and submit to the State upon request such information as is required in order to assure compliance with FTA requirements.

The Subrecipient shall submit to the State at the beginning of each calendar year, a certification that the

Project is still being used in accordance with the terms of the approved Application and FTA requirements.

Section 8. Contracts Under This Agreement. Unless otherwise authorized in writing by the State, the Subrecipient shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the State.

Section 9. Records and Reports. The Subrecipient shall advise the State regarding the progress of the Project at such times and in such manner as the State and FTA may deem necessary by, but not limited to, the submission of annual and quarterly reports, and the holding of meetings.

The Subrecipient shall collect and submit to the State, at such time as it may require, such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by the State and FTA.

Section 10. Inspection. The Subrecipient shall permit the State, the Comptroller General of the United States and the Secretary of the United States Department of Transportation, or their authorized representatives, to inspect Projects provided by FTA funds, and related vehicles, equipment, facilities and operations of the Subrecipient, transportation services rendered by the

Subrecipients, and all relevant Project data and information records. The Subrecipient shall also permit the above named parties to review the books, records, and accounts of the Subrecipient pertaining to the Project.

Section 11. Termination.

- (a) For Convenience. The State may terminate the Project and cancel this Agreement should continuation of the Project not produce beneficial results.
- (b) For Cause. The State may, by giving a 30-day written notice to the Subrecipient, terminate the Project and cancel this Agreement for any of the following reasons:
 - (1) The Subrecipient discontinues the providing of transportation services as described in the approved Application;
 - (2) The Subrecipient does not comply with applicable Federal, State and local laws and requirements;
 - (3) The Subrecipient takes any action pertaining to this Agreement without the approval of the State and which under the procedures of this Agreement would have required the approval of the State;

- (4) The commencement, prosecution or use of the Project by the Subrecipient is, for any reason, rendered improbable, impossible or illegal; and
- (5) The Subrecipient shall be in default under any provision of this Agreement.

(c) Action Upon Termination. Upon termination of the Project and cancellation of this Agreement under the provisions of paragraph (a) or (b) of this Section, the Subrecipient agrees to dispose of the Project in accordance with FTA procedures.

Section 12. Agreement Changes. Any amendments to this Agreement shall be pursuant to written agreement by the State and the Subrecipient.

Section 13. Interest of Members or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement, or to any benefit arising therefrom.

Section 14. Prohibited Interest. No member, officer, or employee of the Subrecipient during his tenure and for one year thereafter shall have monetary interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 15. Equal Employment Opportunity. In connection with the performance of this Agreement, the Subrecipient shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Such actions shall include, but

not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertisement; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Section 16. Title VI - Civil Rights Act of 1964. The Subrecipient will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of DOT issued thereunder (CFR Title 49, Subtitle A, Part 21), and the assurance by the Subrecipient pursuant thereto.

Section 17. Minority Business Enterprise. In connection with the performance of this Agreement, the Subrecipient will cooperate with the State in meeting the State's commitments and goals with regard to the maximum utilization of minority business enterprises and will use its best efforts to insure that minority business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.

Section 18. American With Disabilities Act. In connection with the performance of this Agreement, the Subrecipient must comply with CFR Title 49 Parts 27, 37, and 38 implementing the American With Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap.

Section 19. Certifications. In connection with the performance of this Agreement, the Subrecipient shall verify with the vendor that they have submitted all certifications in conjunction with the delivery currently required, including but not limited to: Bus Testing Certification, Buy America Certification, FMVSS Certification, Debarment Certification, Disadvantaged Business Enterprises Certification, and Lobbying Disclosure. The Subrecipient shall notify the State of any discrepancies.

Section 20. Procurement. Projects procured by the Subrecipient under this Agreement shall have a State approved procurement program and process pursuant to HRS 103-D and FTA Third Party Contracting requirements.

Section 21. Indemnification Agreement. The Subrecipient shall hold harmless, indemnify, defend and where appropriate, insure the State, its officers, agents, representatives, successors and assigns, and other governmental agencies from any and all suits or actions of every nature and kind which may be brought for or on account of any injury, death, or damage arising or growing out of the acts or omissions of the Subrecipient, its officers, agents, servants, or employees, related to or connected with Subrecipient's performance under this Agreement.

It is not the intention of the parties to this Agreement to make the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a

party hereto to maintain a suit for personal injuries or property damage based on a contract theory of liability.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

APPROVED AS TO FORM:

STATE OF HAWAII

Deputy Attorney General

By

[RODNEY K. HARAGA](#)
Director of Transportation

Name of Recipient Organization

By _____

Its _____

Notary acknowledgement for the
Name of Recipient Organization